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FACULTY OF LAW

LEGAL PROCESS



Professor Angela Fernandez

2007

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---	---

John Hamilton Baker, “The Forms of Action,” in <i>An Introduction to English Legal History</i> , 4 th ed. (London: Butterworths, 2002) 53-69	8
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Patrick Fitzgerald and Barry Wright, excerpts from “The Law at Work: Evidence and Procedure” in <i>Looking at Law: Canada’s Legal System</i> , 5 th ed. (Toronto: Butterworths, 2000) 83, 85-8	30
---	----

Kenneth E. Scott, “Two Models of the Civil Process” (1975) 27 Stanford Law Review 937 at 937-940	33
--	----

Lawrence B. Solum, “Procedural Justice” (2004) 78 Southern California Law Review 181 at 183-9	35
---	----

“Outline of the Procedural History of <i>Anderson v. Cryovac</i> ” in <i>A Documentary Companion to a Civil Action</i> , (New York: Foundation Press, 2002) xxix - xlvi	39
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Recommended Readings

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Excerpts from Lon L. Fuller, “The Morality that Makes Law Possible,” “The Concept of Law,” & “The Substantive Aims of Law” in *The Morality of Law* (New Haven, CT: Yale University Press, 1969) 33-41, 96-7, 154-5 75

Mijan Damaska, “Truth in Adjudication” (1998) 49 Hastings Law Journal 289 82

Jerome Facher, “The Power of Procedure: Reflections on ‘A Civil Action’” in *A Documentary Companion to a Civil Action*, (New York: Foundation Press, 2002) xvii - xxiv 92

Recommended Readings

Excerpts from John Burrows, *Recovering Canada: Resurgence of Indigenous Law* (Toronto: University of Toronto Press, 2002) ix-xii, 159-164 96

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Excerpts from Ian Brodie, “Interveners at the Supreme Court of Canada” in *Friends of the Court: The Privileging of Interest Group Litigants in Canada* (Albany, NY: State University of New York Press, 2002) 18-20 111

Charles R. Epp, “Do Bills of Rights Matter? The Canadian Charter of Rights and Freedoms” (1996) 90 American Political Science Review 765 at 769-71 113

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Toronto (City) v. CUPE, Local 79, [2003] SCC 63251

Minott v. O'Connor 1999 ONCA 44257

Donald J. Lange, excerpts from “The General Nature of *Res Judicata*,” “Issue Estoppel,” “Cause of Action Estoppel” in *The Doctrine of Res Judicata in Canada* (Toronto: Butterworths, 2000) 1, 3-8, 23-4, 111.....261

Dale Streiman & Kurz LLP v. De Teresi [2007] 84 O.R. (3d) 383265

2.5 Summary Judgment, Striking Claims, etc.

Jane Doe v. Metropolitan Toronto (Municipality) Commissioners of Police (1989) 58 D.L.R. (4th) 396.....269

Jane Doe, excerpts from “The Right to Take the Police to Court” in *The Story of Jane Doe: A Book About Rape* (Toronto: Random House, 2003) 144-5295

Recommended Reading

Rule 11 “Signing of Pleadings, Motions, and Other Papers; Representations to Court; Sanctions” Federal Civil Judicial Procedure and Rules, Rev. Ed. (St. Paul, MN: Thomson West, 2005).....297

2.6 In Whose Interests?

Jane Doe, excerpts from “The Right to Take the Police to Court” in *The Story of Jane Doe: A Book About Rape* (Toronto: Random House, 2003) 145-53304

S. Ellman, “Client Centeredness Multiplied” in Gary Watson, et al., eds., *The Civil Litigation Process*, 5th ed., (Toronto: Emond Montgomery, 1999) 207-16.....309

Ministry of the Attorney General, “Ontario Government Improves Access to Justice” Press Release, 30 June 2004314

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Jane Doe, “Discovering Jane Doe” in *The Story of Jane Doe: A Book About Rape* (Toronto: Random House, 2003) 166-82.....315

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“Privilege and Related Issues” in <i>Evidence: A Canadian Casebook</i> , 2 nd ed., Hamish Stewart, ed. (Toronto: Emond Montgomery, 2006) 751-5, 786-7	334
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“Memorandum and Order on Plaintiffs’ Motion for a New Trial,” “Anderson v. Cryovac,” “Scope of Discovery: Work Product Protection,” “Scope of Discovery: Attorney-Client Privilege” in <i>A Documentary Companion to a Civil Action</i> , (New York: Foundation Press, 2002) 417-38, 205-10	347
“Statement of Jerome P. Facher,” “Written Statement of Attorney Mary K. Ryan” in <i>A Documentary Companion to a Civil Action</i> , (New York: Foundation Press, 2002) 440-50	361

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Gavin MacKenzie, “Is Keeping Secrets in Client’s Best Interest” Law Times, 28 February 2000, 8	367
Kirsten McMahon, “In House Opinion Protected By Privilege” Law Times, 7 June 2004, 3	369

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Superior Court of Justice, “Civil Case Management: Toronto Update” Summer 2003 ..	391

Kim Honey, “Police Failed Rape Victim” The Globe and Mail, 4 July 1998, A1	392
Jane Doe, “‘Goddamn, if she didn’t poster,’” “Winning” <i>The Story of Jane Doe: A Book About Rape</i> (Toronto: Random House, 2003), 47-50, 274-294.....	394
Jonathan Woodward, “Anger of the Balcony Rapist: ‘There is No Cure...But People are Making it as Difficult as Possible’” The Globe and Mail, 5 March 2007, A1	407
Jonathan Woodward, “Civil Lawsuit Cited in Outing of Rapist in B.C.” The Globe and Mail, 2 March 2007, A10.....	409

Recommended Reading

Owen M. Fiss, “Against Settlement” (1984) 98 <i>Yale Law Journal</i> 1073 at 1075-90, reprinted in Gary Watson, et al., eds., <i>The Civil Litigation Process</i> , 5 th ed., (Toronto: Emond Montgomery, 1999) 250-4	411
Chris A. Carr & Michael R. Jencks, “The Privatization of Business and Commercial Dispute Resolution: A Misguided Policy Decision” (2000) 18 Kentucky Law Journal 183 at 185-95, 200, 208, 228-9	414

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Laurence Olivo and Mary Ann Kelly, “Costs,” “Retainer,” “Docket Slip,” “Bill of Costs” in <i>Civil Litigation Instructor’s Guide</i> (Toronto: Emond Montgomery, 2003) 183, 28-9, 120-1	422
---	-----

Mark M. Orkin, “Party-and-Party Costs,” “Costs Under Legal Aid Ontario,” “Costs in the Supreme Court of Canada” in <i>The Law of Costs</i> , 2 nd ed., vol 1, (Aurora, ON: Canada Law Book, 2006) 2.1-2.10, 2.13-2.14, 9.1-9.3, 10.1-10.2	425
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Cassandra Szklarski, “More People Fend for Themselves in Court as Legal Fees Rise, Access Drops” Canadian Press, 5 June 2003.....	431
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Tracey Tyler, “Taking Your Own Counsel” The Toronto Star, 7 March 2007, A03	434
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Michael P. Silver, excerpt from “Negotiation Basics” in <i>Mediation and Negotiation: Representing Your Client</i> (Markham, ON: Butterworths, 2001) 10.....	437
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Constance Backhouse, “Gender and Race in the Construction of ‘Legal Professionalism’: Historical Perspective”.....448

Mugesera 2005 SCC 39474

Recommended Reading

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“Judging the Courts: Wikinews Interviews Prof. Lawrence Douglas” 21 November 2006
http://en.wikinews.org/wiki/Judging_the_Courts:_Wikinews_interviews_Prof._Lawrence_Douglas507

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